



The New York Times Building  
37th Floor  
620 Eighth Avenue  
New York, NY 10018-1405  
212.808.2700  
Fax 212.286.9806

Thomas McC. Souther  
direct dial: 212.808.2729  
direct fax: 1.800.803.8463  
southertm@pepperlaw.com

April 17, 2017

**Via ECF**

Honorable Joseph F. Bianco  
United States District Judge  
Eastern District of New York  
100 Federal Plaza  
Central Islip, New York 11722

Re: United States v. Philip A. Kenner, et al, 13-CR-607 (JFB)  
Post-Conviction Protective Order

Dear Judge Bianco:

I, along with Kevin P. Mulry of Farrell Fritz, P.C., represent Diamante Cabo San Lucas, LLC ("DCSL"), Kenneth Jowdy ("Jowdy"), KAJ Holdings, LLC, ("KAJ Holdings"), Diamante Properties, LLC, and Diamante Cabo San Lucas S. De R.L. De C.V., (collectively, the "DCSL Parties") in connection with the forfeiture proceedings pending in the referenced matter. We submit this letter on behalf of the DCSL Parties to renew the DCSL Parties' request that the district court approve a settlement reached among Mr. Jowdy, individually and in his capacity as managing member of KAJ Holdings, DCSL, and Diamante Del Mar, LLC ("DDM"), and the holders of the majority of the membership interests in DDM and CSL Properties 2006, LLC ("CSL Properties") (collectively, the "Settling Investors"). The Settling Investors, through their counsel, Steven Main of Hill, Rugh, Keller & Main, P.L., join in the DCSL Parties' request.<sup>1</sup>

The DCSL Parties filed an application with the Court on December 13, 2016 that sought, among other relief, the Court's approval of a settlement of civil actions pending in the Delaware Court of Chancery (the "Original Settlement Agreement"). The government opposed the DCSL Parties' application, including that portion of the application that sought the Court's

---

<sup>1</sup> A copy of the letter from the Settling Investors' counsel is attached as Exhibit A to this letter.



Honorable Joseph F. Bianco

Page 3

April 17, 2017

I forwarded a copy of the Revised Settlement Agreement to the government the week before last and requested that the government advise me whether they plan to oppose our request, but I have not received a response from the government.

The Revised Settlement Agreement is believed by the majority in interest of the members who invested in DCSL through CSL Properties, and who invested in the DDM project, to be in their best interest in resolving this protracted dispute. These Settling Investors, all of whom were at one time clients of defendant Kenner, acknowledge that they were misled by Kenner, and that their best hope for the continued success of the DCSL project is under Mr. Jowdy's leadership. Accordingly, the DCSL Parties and the Settling Investors respectfully request that the Court approve the Revised Settlement Agreement.

Respectfully submitted,

A handwritten signature in blue ink, which appears to read "Thomas McC. Souther".

Thomas McC. Souther  
Counsel for the DCSL Parties

cc: Kevin P. Mulry, Esq. (By email)  
AUSA Diane Leonardo (By ECF)  
AUSA Madeline O'Connor (By ECF)  
Jesse M. Siegel, Esq. (By ECF)  
Sanford Talkin, Esq. (By ECF)

Enclosures